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Crl.A.No. 4 OF 1998
ITEM No.105

Court No.4

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL No.4/1998

Arasappa

Appellant (s)

VERSUS

State of Karnataka
(With Office Report)

Respondent (s)

Date : 17/03/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s)Mr.K.Lingaraja, Adv.
Mr.E.C. Vidya Sagar, Adv.

For Respondent (s)

Mr.Sanjay R. Hegde, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed and bail bonds are discharged in terms of the signed order.

(Sheetal Dhingra)(Prem Prakash)
Court Master Court Master
[The signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 4 OF 1998

Arasappa

...Appellant (s)

Versus

State of Karnataka

...Respondent(s)

O R D E R

The appellant in this appeal was tried and convicted by the 22nd City Civil and Sessions Judge , Bangalore Rural District, Bangalore for an offence punishable under Section 376 of the India n Penal Code (hereinafter referred to as 'the IPC') and was sentenced to undergo seven years r igrorous imprisonment. The appeal filed by the appellant before the High Court of Karnataka ha ving been rejected, he is before us in this appeal.

The prosecution case stated briefly is that the victim (PW1) who is aged about 19 to 20 years was forcibly abducted by the appellant and another accused in an autorickshaw on 19th of February, 1989 from Timmenhalli Road leading to Vijay Nagar bus stand at about 6.20 p.m. when she was going with a cousin of her and she was taken to a house and raped by the two accused persons. The incident of abduction was reported to her sister (PW2) by the cousin based on which PW2 approached the Vijay Nagar police station on 19th February, 1989 and lodged a complaint of abduction at about 9.45 P.M. and crime under Section 363 IPC was registered against unknown persons. It is the prosecution case that on the morning of 20th February, 1989 after the appellant and the acquitted accused abandoned the prosecutrix, she returned home and narrated the incident to PW2 who then took her to the same police station in the afternoon where on her statement being recorded the crime was altered to one under Section 376. It is to be noticed that in the said complaint prosecutrix had stated the name of the appellant herein while she was unable to name the other accused. It is also come in evidence that investigating agency after the arrest of the accused persons seized their personal clothes so also the sari, blouse, peticoat of PW1 and sent the same to chemical examination but nothing incriminating was found.

Even during the course of medical examination, the doctor was unable to find any evidence of recent sexual intercourse though he noticed the fact that the PW1 was used to sexual intercourse. In the background of this, the trial court as well as the High Court accepting the evidence of PW1 held the appellant guilty of offence under Section 376 while it gave the benefit of doubt to the other accused and acquitted him because PW1 had not identified the said accused. The prosecution case regarding the appellant rests solely on the identification made by the victim (PW1) there being no other corroborating evidence of any kind. Therefore, we will have to examine whether the prosecution has proved this aspect of the case, namely the identification of the appellant by PW1 beyond beyond all reasonable doubt. While it is true that in the second complaint filed on 20th February, 1989 the name of the accused person appellant is mentioned in the complaint as also in the evidence before the court she did state that it is these accused persons who abducted her in the autorickshaw. In the cross-examination she has specifically admitted the following:-

"I had not seen these accused before that date. I never knew their names and addresses. I was not aware of their names and addresses even when I went to the Police Station. I did not know their names"

In these background, it is rather surprising how the police came to know the name of the appellant on 20th of February, 1989 when the second complaint was lodged by PW1. Since this is the only piece of evidence based on which the two courts below have convicted the appellant, we find it extremely difficult to accept this piece of evidence as sufficient to prove the prosecution case beyond all reasonable doubt more so in the background of the fact that there was no test identification parade conducted.

For the reasons stated above, giving the benefit of doubt to the appellant here, we allow this appeal, set aside the conviction and sentence imposed on the appellant by the courts below. The bail bonds are discharged.

.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)
New Delhi
March 17, 2004.